

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Complaint of NAWO and
SOUL Against Minnesota Power Regarding the
Arrowhead Transmission Line Project

ISSUE DATE: September 24, 2004

DOCKET NO. E-015/C-04-955

ORDER DISMISSING COMPLAINT AND
REQUIRING FUTURE FILING

PROCEDURAL HISTORY

On June 23, 2004, the North American Water Office (NAWO), Save Our Unique Lands (SOUL), and 89 individual customers of Minnesota Power jointly filed a complaint under Minn. Stat. § 216B.17, asking the Commission to invalidate a decision of the Minnesota Environmental Quality Board granting Minnesota Power an exemption from the Power Plant Siting Act¹ for a proposed high-voltage transmission line in northeastern Minnesota.

On June 25, 2004, the Commission issued a notice requesting comments on the complaint and setting comment time frames. The Commission received comments from the following persons:

- Minnesota Department of Commerce
- Residential and Small Business Utilities Division of the Office of the Attorney General
- Minnesota Power
- SOUL and NAWO
- World Organization for Landowner Freedom
- Minnesotans for an Energy-Efficient Economy

On September 9, 2004, the Commission heard oral argument on the complaint from the parties listed above, as well as comments from several landowners who would be affected by the proposed transmission line.

¹ Minn. Stat. §§ 116C.51-116C.69.

Having reviewed the entire record and having heard the arguments of the parties, the Commission makes the following findings, conclusions, and order.

FINDINGS AND CONCLUSIONS

I. Introduction and Background

On March 19, 2001, the Minnesota Environmental Quality Board issued an order granting Minnesota Power an exemption from the requirements of the Power Plant Siting Act² for a proposed transmission project known as the “Arrowhead Project.” The Arrowhead Project consists of a proposed 12.5-mile, 345 kV/115 kV and 345 kV/230 kV high-voltage transmission line, running from the Company’s Arrowhead substation in Hermantown, St. Louis County, to the Wisconsin border at Oliver, Wisconsin. The project also includes associated upgrades at the Arrowhead substation.

At the time the exemption was granted, subdivision 5 of the Power Plant Siting Act³ and the applicable rules⁴ permitted the Board to exempt small-scale, low-impact transmission projects from power plant siting requirements upon finding that those projects would not create significant human or environmental impact. The Board found that the proposed Arrowhead Project met that standard and issued the requested exemption.

One of the parties to the proceeding, the World Organization for Landowner Freedom, appealed the exemption order to the Minnesota Court of Appeals, which affirmed it.

II. The Complaint

Complainants now ask this Commission to overturn the Board’s decision, for three main reasons.

First, they argue that the Arrowhead Project is in fact being proposed and constructed not for the benefit and ultimate ownership of Minnesota Power, but for the benefit and ultimate ownership of the American Transmission Company, a corporation whose Minnesota regulatory status is unclear and a corporation which they claim lacks the legal right to condemn private property in Minnesota. They claim that Minnesota Power abused the regulatory process by posing as the real party in interest when it was not, that it abused its power of eminent domain by condemning land it did not intend to use for its own facilities, and that it did these things as a proxy for the American Transmission Company, which lacked the legal authority to do them.

² Minn. Stat. §§ 116C.51-116C.69.

³ Minn. Stat. § 116C.57, subd. 5

⁴ Minn. Rule 4400.3900.

Second, they argue that Minnesota Power has violated Condition 9 of the order granting the exemption, which states, “Minnesota Power shall obtain all necessary permits from federal and state and local units of government before proceeding with construction.”

Third, they argue that the number and size of conductors being used in the transmission line actually under construction differ from those described in the exemption application, which may constitute a material change requiring reexamination of the project’s exempt status.

Complainants ask the Commission to take three actions: (1) rescind the exemption granted for the Arrowhead Project by the Environmental Quality Board; (2) require the American Transmission Company to file an application for a certificate of need for the Arrowhead Project; and (3) order the Attorney General to initiate all appropriate civil and criminal proceedings against Minnesota Power and the American Transmission Company for unauthorized construction of a transmission line.

III. Positions of the Other Parties

A. Minnesota Power

Minnesota Power argued that the Commission has no jurisdiction over the issues raised in the complaint, which it claimed were all within the jurisdiction of the Environmental Quality Board or the Court of Appeals.

The Company further argued that, jurisdictional concerns aside, the allegations of the complaint lacked substantive merit. The Company denied that changes in the size and number of conductors were material changes, stated that it had secured all permits required under the order of the Environmental Quality Board before beginning construction, and argued that the ultimate ownership of the project had no bearing on the continuing validity of the exemption granted by the Environmental Quality Board.

Finally, the Company stated that “it is no secret that ownership of the Minnesota segment of the 345 kV line may vest in ATC [American Transmission Company]”⁵ and that the complaint was correct in acknowledging that Minnesota Power and ATC would seek regulatory approval before transferring ownership of that portion of the line to ATC.⁶ The Company argued that this change in ownership would have little practical impact, since Minnesota Power would continue maintaining the line no matter who owned it, and since the Midwest Independent System Operator would continue controlling its use no matter who owned it.⁷

⁵ Comments of Minnesota Power, p. 7.

⁶ Comments of Minnesota Power, p. 8.

⁷ Comments of Minnesota Power, p. 8.

B. The Department of Commerce

The Department of Commerce recommended dismissing the complaint, primarily on grounds that the Commission lacks jurisdiction to review, enforce, alter, or rescind the orders of the Environmental Quality Board. The Department argued that all issues raised in the complaint stemmed from the Environmental Quality Board's decision and should be raised before that body.

Finally, the Department stated that there was no compelling public interest that would justify or require the Commission to insert itself into this dispute under its general supervisory authority.

C. Residential and Small Business Utilities Division of the Office of the Attorney General

The Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) took no position on complainants' claims or requests for relief, but argued that it was critical to the public interest that no transfer of ownership of any portion of the Arrowhead Project take place without prior Commission approval. The RUD-OAG stated that any transfer to an entity not clearly subject to Minnesota regulation, which is arguably the case with the American Transmission Company, would raise public policy concerns of the highest order.

D. Minnesotans for an Energy-Efficient Economy

Minnesotans for an Energy-Efficient Economy (ME3) urged the Commission to use its general investigatory and supervisory authority under Minn. Stat. §§ 216B.14 and 216B.17 to examine Minnesota Power's conduct in seeking an exemption from the Power Plan Siting Act for the Arrowhead Project and exercising its eminent domain authority under that exemption, if in fact it is not the party who will own and benefit from the project.

E. World Organization for Landowner Freedom

The World Organization for Landowner Freedom argued that the public interest required a thorough investigation of the allegations in the complaint, that the Commission had no jurisdiction over the complaint, and that the Commission should dismiss the complaint and direct complainants to re-file it with the Environmental Quality Board.

IV. Commission Action

Under Minn. Stat. § 216B.17, subd. 1, the Commission has broad authority to conduct any investigation it deems necessary into a host of claims relating to the production, transmission, delivery, or furnishing of natural gas or electricity or "any service in connection therewith." The statute states that the Commission may dismiss any complaint without a hearing if it determines that a hearing is not in the public interest.

The Commission's rules on formal complaints set two criteria that must be met to investigate a complaint's allegation(s): (1) the Commission must have jurisdiction over the matter; and (2) the Commission must determine that there are reasonable grounds to investigate the matter. Minn. Rules, 7829.1800, subps. 1 and 2.

While the Commission does not conclude that it lacks jurisdiction over every aspect of this complaint, the Commission will dismiss it, finding that there are no reasonable grounds to launch an investigation into its allegations at this time and that the public interest does not currently require such action. There are two main reasons for this decision.

First, the complaint relates almost entirely to issues within the expertise and jurisdiction of another agency, the Environmental Quality Board. The Board is clearly much better equipped than this Commission to evaluate claims that one of its exemption orders was obtained improperly, is no longer valid, or should be re-examined.

Second, the issue of most concern to the Commission and the one most directly within its expertise – ensuring that no transfer of any portion of the Arrowhead Project takes place without Commission review – is not yet ripe.

Minnesota Power is currently pursuing the Arrowhead Project as its own project in its own name. It has stated that it will seek Commission approval before transferring any ownership interest in the project to any other party. If and when a specific transfer is proposed, there will be ample opportunity to examine the public interest issues the transfer raises, including any public interest issues related to the regulatory status of the transferee.

Finally, the Commission takes seriously its statutory obligation to review property transfers, mergers, and consolidations⁸ and will therefore include in the order dismissing this complaint a directive to Minnesota Power requiring a filing under Minn. Stat. § 216B.50 before transferring any part of the Arrowhead Project to another entity.

The Commission will so order.

ORDER

1. The Complaint jointly filed by the North American Water Office, Save Our Unique Lands, and 89 individual customers of Minnesota Power is hereby dismissed.
2. Before transferring to the American Transmission Company or to any other entity any ownership interest in the transmission lines, rights-of-way, easements, and/or any related assets associated with the Arrowhead Project, Minnesota Power shall either file a petition for approval under Minn. Stat. § 216B.50 or make a filing explaining its reasons for determining that a § 216B.50 filing is not required.

⁸ Minn. Stat. § 216B.50.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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